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Financing of the International Residual Mechanism for Criminal Tribunals

Construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch (A/71/753). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General, concluding with written responses received on 21 February 2017.

2. The report of the Secretary-General was submitted pursuant to paragraph 8 of General Assembly resolution 70/258 and provides an update on the project since the fifth progress report of the Secretary-General (A/70/698).

II. Progress update, project management and project schedule

3. The report of the Secretary-General on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch (A/71/753), is the sixth progress report on the project. Information with respect to the background of the project and the related resolutions of the General Assembly on the project is contained in paragraphs 1 to 3 of the report of the Secretary-General.

Project progress and schedule

4. In his report, the Secretary-General explains the progress on the construction project, including the substantial completion of the facility on 1 December 2016 and the occupation of the premises by the Mechanism on 5 December 2016; the completion of a second audit undertaken by the Office of Internal Oversight

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Services (OIOS), which assigned a "satisfactory" rating to the management effectiveness of the construction phase; the projection of a residual balance of $455,814 from the contingency funds; and an outline of the approaches used to ensure appropriate recovery of direct and indirect costs.

5. The Advisory Committee recalls that the project duration, initially estimated at five years and three months, was shortened to four years, in accordance with the request of the General Assembly in its resolution 66/240 B. Subsequently, the Secretary-General reported that the estimated date of completion had been postponed to early 2016 (see A/69/734, annex II and A/69/788, para. 17). In his fifth progress report, the Secretary-General had indicated that the project had experienced further delays owing to the topographical errors in the initial architectural drawings and the delayed installation of a "curtain wall" (the exterior windows).

6. In his sixth progress report, the Secretary-General indicates that, though the project was due to be completed by 28 February 2016, the construction project was in fact completed on 1 December 2016 and occupied by the Mechanism on 5 December 2016 (see A/71/753, paras. 4, 12 (d) and 35-42). A revised project schedule, taking into account delays arising from the topographical error and installation of the curtain wall is provided in annex II of the report of the Secretary-General.

7. As stated in the report, the project's construction phase has now concluded and a new post-occupancy/defect and liability phase has commenced as at 1 December 2016 and will last for a period of 12 months. During that time, the contractor is required to remedy any defective works included in a punch list developed by the project team. Upon enquiry, the Advisory Committee was informed that those items include minor repairs, for example: fixing broken electrical faceplates; completing paint touch-ups; and addressing defects with the new heating, ventilation and air conditioning system. **The Advisory Committee notes the substantial completion of the project and that major project elements have been completed. The Committee urges timely completion of all repairs to the items included in the punch list. Any related cost implications for the Organization should be avoided to the extent possible. The Advisory Committee looks forward to full completion of the project within the post-occupancy phase.**

Local engagement and cooperation with the host country

8. In his report, the Secretary-General explains the ongoing excellent cooperation between the Mechanism and the host country, the United Republic of Tanzania (see A/71/753, paras. 22-25). In the past year, the host country has connected the final electrical utilities, the Internet and telecommunications, constructed a temporary access road to the site and installed power and water lines at no extra cost to the Organization. **The Advisory Committee notes with gratitude the contributions made by the host country throughout the course of the construction project.**

9. As indicated in previous reports of the Secretary-General, the construction project benefitted substantially from the integration of local knowledge and capacity into the project, in accordance with paragraph 5 of General Assembly resolution 70/258, along with the Organization's accumulated expertise in implementing such projects. As noted in the summary of the sixth progress report of the Secretary-General, the use of local labour, materials and capacity was maximized throughout the project duration.

Governance and oversight

10. The report of the Secretary-General indicates that the third and final audit conducted by OIOS is under way and will assess the immediate post-construction phase. The second audit concluded on 16 February 2016 indicated an overall

"satisfactory" rating with regard to the management effectiveness of the construction phase. Upon enquiry, the Advisory Committee was informed that contractual claims would be included in the third audit of the post-construction phase. **The Advisory Committee looks forward to the finalization of the third and final audit of the post-construction phase activities and to reviewing in detail the assessment of accountability and related compensation claims.**

11. The report also notes that OIOS found that appropriate measures were in place for identifying, assessing and communicating risks and mitigation measures, including through the development of a risk register at the initial stage of the project.

III. Project expenditures, contract amendments and contingency provisions

12. As noted in previous reports of the Secretary-General, the total resources approved by the General Assembly for the project amounted to $8,787,733, comprising the total estimated project cost of $7,737,362 and $1,050,371 for contingencies. During its consideration of the sixth progress report, the Advisory Committee was informed, upon enquiry, of the updated expenditures for the period 2013-2016, excluding contingency costs. As of the end of 2016, the total expenditures were reported as $8,331,919, with a projected expenditure in 2017 until the completion of the project of $1,022,418.

13. Upon further enquiry, the Advisory Committee was informed that the delays caused by the late delivery and installation of the curtain wall had reduced the projected earlier savings anticipated in the fifth progress report of the Secretary-General, in which projected savings of $111,927 were reported under project supervision and management and were anticipated to be applied to amounts covered by contingency provisions (see A/70/698, para. 53). The sixth progress report projects reduced savings in that category of $22,927 (see A/71/753, table 1).

Project contingency provisions

14. The Advisory Committee was informed upon enquiry that direct costs attributable to the delay relating to the curtain wall were $124,000 for extended architect's fees and $65,000 for additional architect services. With regard to indirect costs, the Committee was informed that approximately $195,000 was incurred as a result of the extended rental of the premises where Mechanism staff worked until the curtain wall was fully installed. Other additional costs of $2,000 resulted from travel, as mentioned in paragraph 28 of the previous report of the Advisory Committee on the matter (A/70/772). **The Advisory Committee continues to stress that the United Nations should not bear the responsibility for paying any direct or indirect costs resulting from the topographical error, the curtain wall installation or additional travel costs. In that connection, the Committee reiterates that the General Assembly has stated that all remaining unused contingency funds shall be returned to Member States at the conclusion of the project (see General Assembly resolution 70/248, sect. IX, para. 20 and sect. X, para. 18).**

Architectural and construction contracts

15. The sixth progress report of the Secretary-General sets out details relating to architectural and construction contracts and the related project delays in paragraphs 64 to 73. As reported in paragraphs 64 and 65, the substitution of the heating, ventilation and air-conditioning system and delays in the delivery of the curtain wall

resulted in the granting of two additional contract extensions. The report indicates in paragraph 66 that delays relating to the installation of the curtain wall could result in the application of delay damages and other contractual remedies.

16. As explained in paragraphs 70 to 73 of the report, three amendments to the architectural contracts were executed as follows: (a) an extension of the construction phase to account for the delay incurred as a result of the topographical error, which resulted in no additional cost to the United Nations; (b) an increase of architects' presence on site, costs for which were capped at $65,000; and (c) the provision of architectural services for the extended construction stage, which were capped at $124,200. Services included the development of a punch list to address repairs and minor defects in the construction project, which are expected to be delivered by the end of the liability period and upon acceptance by the United Nations.

17. Upon enquiry, the Advisory Committee was informed that the attribution of responsibility for incurring those costs had not yet been determined. Recalling paragraph 7 of General Assembly resolution 70/258, the Secretary-General is requested to pursue the recovery of direct and indirect costs arising from errors and delays where it is economically feasible to do so (see also A/71/753, para. 67). After consultation with the Office of Legal Affairs, it was determined that any consideration of contractual remedies, including delay damages, would be resolved during the close-out phase and reported to the Assembly thereafter. Nevertheless, as reported in paragraph 69 of the report of the Secretary-General, the contractor has been informed that payment for substantial completion would be withheld pending assessment of the United Nations of any delay damages and additional fees in connection with the delays. **The Advisory Committee looks forward to the completion of this assessment of contractual remedies and to reviewing the details thereon in the subsequent report of the Secretary-General** (see para. 23 below).

IV. Other Matters

Furniture and equipment reuse and workplace arrangements

18. The Advisory Committee recalls that the provision of office furniture was not included in the initial project cost. The Mechanism initially estimated that the cost of new furniture for the new facility would amount to $424,500 (see A/67/768, para. 18). Upon enquiry, the Advisory Committee was informed that new furniture requirements were reflected in the budget for the Mechanism for the biennium 2016-2017, on the basis of the ability to cover a portion of its furniture requirements by reusing office furniture from the International Criminal Tribunal for Rwanda. During its consideration of the most recent report, the Advisory Committee was informed that 400 pieces of used furniture at a value of $40,800 were transferred to the new facility. New furniture in the amount of $270,000 was purchased for the new facility for office, repository and cafeteria spaces.

19. With regard to the application of flexible workplace arrangements at the Mechanism facility, the Advisory Committee was informed upon enquiry that such arrangements could not be applied since the Mechanism required more enclosed space than originally planned. It was reported that a portion of the new and reused furniture was earmarked for ad hoc staff during peak court activities. Where additional staff did not require dedicated space, they might be accommodated in the facility using flexible workplace strategies. **The Advisory Committee stresses the need for all future construction projects to incorporate clear baseline data and flexible workplace elements, wherever possible, from the outset. In the case of**

the Residual Mechanism, the Committee requests that information concerning the prescribed space per staff member and comparisons with standard Secretariat ratios be included in the next report of the Secretary-General (see para. 23 below).

Accommodation of other mechanisms

20. In paragraph 28, the report of the Secretary-General notes that other international organizations and judicial institutions, such as the African Court on Human and Peoples' Rights, are expected to move to the vicinity of the Mechanism's new premises. The Advisory Committee was also informed, upon enquiry, that discussions are ongoing regarding the possibility of sharing certain facilities with entities planning to move to the vicinity of the Mechanism, noting that synergies will be created wherever it is economical, efficient, secure and possible to do so.

21. With regard to the possibility of co-locating the remaining operations of the Residual Special Court for Sierra Leone into the Mechanism's new facility (see A/71/613, para. 21), the Secretariat confirmed that space and staffing requirements for the Residual Special Court for Sierra Leone were not considered in the original design and occupancy of the Mechanism's premises in Arusha, in conformity with the first progress report of the Secretary General on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch (A/66/754).

22. **In this context, the Advisory Committee recommends that the General Assembly request the Secretary-General to consider and report on the possibility of accommodating the Residual Special Court for Sierra Leone on the premises in Arusha in the future to maximize cost and management efficiencies and as part of ongoing discussions on the achievement of operational synergies with other entities.**

23. **The Advisory Committee recommends that the General Assembly request the Secretary-General to submit a final progress report for consideration at its seventy-second session, which would include a finalized, updated project budget that includes indirect and direct costs arising from damages and delays indicated in detail, as well as the final amount charged to the project contingency funds. The final progress report should also summarize the outcome of the assessment of responsibility and liability as well as possible options to accommodate the staff of the Residual Special Court for Sierra Leone within the premises of the Mechanism.**

V. Conclusions and Recommendations

24. **The proposed action to be taken by the General Assembly is contained in paragraph 83 of the report of the Secretary-General. Subject to its comments and recommendations in the present report, the Advisory Committee recommends that the Assembly take note of the report of the Secretary-General.**